

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
AIKEN DIVISION

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| Mark Benjamin Hemphill,             | ) | C/A NO. 1:12-827-CMC-SVH |
|                                     | ) |                          |
| Petitioner,                         | ) |                          |
|                                     | ) | <b>OPINION and ORDER</b> |
| v.                                  | ) |                          |
|                                     | ) |                          |
| Warden, Butner Federal Correctional | ) |                          |
| Complex,                            | ) |                          |
|                                     | ) |                          |
| Respondent.                         | ) |                          |
| _____                               | ) |                          |

This matter is before the court on Petitioner's *pro se* petition for habeas corpus, filed in this court pursuant to 28 U.S.C. § 2241.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings and a Report and Recommendation ("Report"). On April 30, 2012, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice and without issuance and service of process. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed objections to the Report on May 16, 2011.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is

made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After conducting a *de novo* review of the record as to the objections made, and after reviewing the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Petitioner’s objections. the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order.

Petitioner’s application for writ of habeas corpus alleges that he received ineffective assistance of counsel throughout the course of his criminal case. Petitioner argues in his objections that not only does this court have jurisdiction over this § 2241 petition, but also that the savings clause of § 2255(e) should be available to him. *See* Objections at 7 (ECF No. 13). However, Petitioner’s objections are without merit, and are rejected.

This petition is dismissed without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

s/ Cameron McGowan Currie  
CAMERON MCGOWAN CURRIE  
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina  
May 29, 2012